IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10250 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SOHAN LAL - Petitioner(s)
Versus
KC PANDE OF HIS SUCCESSOR IN OFFICE & 1 - Respondent(s)

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Appearance :
MR AJ SHASTRI for Petitioner(s) : 1,
MS PROMILA SAFAYA for Respondent(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 07/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ, order or

direction quashing and setting aside the impugned order dated 3rd September 1996. The petitioner has further prayed to direct the respondent authorities to reinstate the petitioner with all consequential benefits. At the outset, it is required to be noted that though order dated 3.9.1996 at Annexure 'C' [Pages 21 to 24] is termed as a dismissal order, on going through the same it appears that the same is not the dismissal order, but the same is a certificate of service. Thus, the order of dismissal which is under challenge is not on record. Be that as it may, it appears from the petition that the petitioner has challenged order of dismissal making a grievance that the impugned order of dismissal is against the principles of natural justice. It is also submitted in the petition that the impugned order of dismissal is contrary to the relevant provisions of law under Coast Guards Act, 1978. A grievance is made in the petitioner that before passing the impugned order

dated 3rd September 1996 no opportunity of hearing was given nor even notice was issued by virtue of which the petitioner can make an effective representation.

2. An affidavit-in-reply is filed on behalf of the respondents. It is specifically denied that the impugned order of dismissal is in breach of principles of natural justice. It is categorically mentioned in the reply that the dismissal order was passed against the petitioner after giving an opportunity to the petitioner and to defend his case. It is also submitted in the reply that action against the petitioner was initiated under the provisions of Section 57 of the Coast Guard Act, 1978 which provide powers to the Commanding Officer to award punishment. It is submitted that the petitioner was served with the chargesheet; a hearing of charges was held by the Commanding Officer on 25.6.1996 in presence of the petitioner; the case was thereafter

transmitted for recording of evidence; the evidence was directed to be recorded by Shri K.C. Pande, Commandant, Coast Guards, Porbandar under Rule 23(i) of the Coast Guard (Disclipline) Rules, 1983 which are the Rules made under Section 123 of the Coast Guard Act, 1978; witnesses were examined by the said officer in presence of the petitioner; petitioner was also given an opportunity to cross-examine the witnesses which was availed of by the petitioner; the petitioner was also given an opportunity to call witnesses, if any, in his defence, however he declined to do so; the evidence was even recorded from 27.6.1996 to 1.7.1996; and a voluntary statement made by the petitioner in presence of an independent witness was also recorded during the aforesaid proceedings on 1.7.1996. It is further submitted in the reply that after the evidence was recorded, the case was again heard by the Commanding Officer on 23rd July 1996. The proceedings before the Commanding

Officer were also held in presence of the petitioner. It has been submitted that after considering the evidence and the stand of the accused the Commanding Officer found him guilty of all the charges framed against him. It is further submitted that the punishment order has been passed after following due procedure as required under the Act and the Rules.

3. Considering the affidavit-in-reply, the contention on behalf of the petitioner that the impugned order is passed in breach of principles of natural justice and/or is contrary to the Coast Guard Act, 1978 and/or the disciplinary Rules cannot be accepted and the same is factually incorrect. On going through the affidavit-in-reply, it appears that detailed procedure has been followed and ample opportunity was given to the petitioner and thereafter after having found the petitioner guilty of all the three charges, the petitioner came to be

dismissed. On going through the charges levelled against the petitioner which are held to be proved, it appears that they are very serious in nature, more particularly when the petitioner belonged to a disciplined force. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed. Rule is discharged, however, there shall be no order as to costs.

[M.R. Shah,J.]

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